

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI
ST. JOSEPH DIVISION

TERRY KEITH WENDT,)
Petitioner,)
v.) Civil No. 07-06116-CV-SJ-NKL-P
Crim. No. 05-6035-01-CR-SJ-NKL
UNITED STATES OF AMERICA,)
Respondent.)

ORDER

On January 28, 2008, this Court denied Wendt's Motion to Vacate, Set Aside or Correct Sentence under 28 U.S.C. § 225. *See Wendt v. United States*, No. 07-6116, 2008 WL 239566 (W.D. Mo. Jan. 28, 2008). Petitioner Terry Keith Wendt requests that this Court issue a Certificate of Appealability [Doc. # 10]. A certificate of appealability will be issued only if the applicant has made a substantial showing of the denial of a constitutional right and has indicated which specific issue or issues satisfy the showing required. *See* 28 U.S.C. §§ 2254(c)(2) & (3). Accordingly, "the petitioner 'must demonstrate that the issues are debatable among jurists of reason; that a court could resolve the issues [in a different manner]; or that the questions are adequate to deserve encouragement to proceed further.'" *Randolf v. Kemna*, 276 F.3d 401, 403 n.1 (8th Cir. 2002) (citations omitted).

Wendt wishes to appeal the Court's holding that 18 U.S.C. § 922(g)(1), the federal felon in possession statute, is constitutional. *See Wendt*, 2008 WL 239566, at *3-*4. But, as noted by the Court, the constitutionality of section 922(g)(1) is not in doubt. *See United States v. Wilson*, 315 F.3d 972, 973 (8th Cir. 2003) (denying constitutional challenge to section 922(g)(1) based on Second

Amendment); *see also United States v. Waller*, 218 F.3d 856, 857 (8th Cir. 2000) (“[I]t is now well-settled that Congress did not violate the Second Amendment in enacting [section 922(g)(1)].” (citing *Lewis v. United States*, 455 U.S. 55, 65-66 & n.8 (1980))). This issue is neither debatable among jurists of reason, resolvable in a different matter, nor adequate to deserve encouragement to proceed further. As a result, Wendt has not met his burden.

Accordingly, it is hereby

ORDERED that Petitioner Terry Keith Wendt’s Petition for Certificate of Appealability [Doc. # 10] is DENIED.

s/ Nanette K. Laughrey
NANETTE K. LAUGHREY
United States District Judge

Dated: March 5, 2008
Jefferson City, Missouri